

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

RUBBERMAID INCORPORATED,)	
)	
Plaintiff,)	Civil Action No. 3:12-cv-00702
)	
v.)	JURY TRIAL DEMANDED
)	
CENTREX PLASTICS, LLC,)	
)	
Defendant.)	

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Rubbermaid Incorporated (“Rubbermaid”) and Defendant Centrex Plastics, LLC (“Centrex”), by their attorneys and pursuant to P.R. 4.3 and the Court’s Scheduling Order (Dkt. No. 18), hereby submit this Joint Claim Construction and Prehearing Statement.

I. P.R. 4.3(A): The Construction of Terms on Which the Parties Agree

The parties have not reached agreement as to the construction of any claim terms of the patents-in-in-suit.

II. P.R. 4.3(B): The Parties’ Constructions of Disputed Terms

The parties dispute the construction of the following claim terms and phrases of U.S. Patent No. 6,079,339 (“the □339 patent”):

- panel;
- rail members;
- lower portion;
- curvilinear lower edge;
- upper portion;
- integrally formed; and

- vertex.

Attached Exhibit A provides a chart of the parties' respective constructions and identification of evidence for the disputed terms of the □339 patent.

The parties dispute the construction of the following claim terms and phrases of U.S. Patent No. 6,178,896 ("the □896 patent"):

- outer wall;
- circumscribing;
- floor member;
- the floor member being disposed generally parallel relative to the panel; and
- wherein the socket is adapted to transmit stresses along the floor member.

Attached Exhibit B provides a chart of the parties' respective constructions and identification of evidence for the disputed terms of the □896 patent.

III. P.R. 4.3(C): Timing for Claim Construction Hearing

The parties anticipate that the claim construction hearing will last approximately two and a half hours.

IV. P.R. 4.3(D): Witnesses at Claim Construction Hearing

The parties will not present live testimony from any witnesses at the claim construction hearing.¹²

¹ It is Centrex's view that Rubbermaid's identification in Exhibits A and B of the Declaration and or testimony of Tom Hanna as supporting extrinsic evidence for every term and phrase to be construed, is untimely and incomplete. Rubbermaid identified Mr. Hanna as a witness for the first time today and did not identify any witness testimony (expert or otherwise) in Rubbermaid's P.R. 4.2(B) identification of supporting evidence. Centrex vigorously disputes Rubbermaid's assertion in Exhibits A and B that Centrex failed to previously disclose Centrex's expert witness Mr. Jones's testimony. In accordance with P.R. 4.2(B), Centrex provided Rubbermaid with a brief description of the substance of the declaration and/or testimony of its expert Vince Jones on May 20, 2013 with respect to every claim term and phrase identified by

V. P.R. 4.3(D): Any Other Issues

The parties do not have any other issues to raise with the Court.

the parties for construction as part of Defendant Centrex Plastics LLC's P.R. 4.2 Preliminary Claim Construction and Extrinsic Evidence disclosure served on that date.

² Rubbermaid disagrees with Centrex's position. Rubbermaid's identification of Tom Hanna as a rebuttal expert witness in response to Centrex's identification of Vince Jones is proper. Prior to its disclosure of its purported expert, Mr. Jones, just two weeks ago, Centrex affirmatively represented to Rubbermaid that it did not anticipate using an expert for claim construction, as set forth in the parties' Certificate of Initial Attorney Conference (Dkt. No. 17 ("Claim construction discovery is generally anticipated to focus on the intrinsic record of the patents-in-suit and the parties do not presently anticipate requiring depositions of fact and/or expert witnesses, but reserve their right to do so.")). On May 20, 2013, Centrex first disclosed to Rubbermaid that it intended to rely upon Mr. Jones to provide extrinsic evidence during claim construction. When the parties met and conferred on May 29, 2013 regarding their exchange of preliminary claim construction statements, Rubbermaid told Centrex that it intended to identify a rebuttal expert witness to in response to Centrex's identification of Mr. Jones. Rubbermaid identified Mr. Hanna on June 3, 2013. Finally, while Centrex has provided a summary of Mr. Jones's opinions, it has not provided any underlying bases for those opinions. Rubbermaid expects to elicit those bases during Mr. Jones's deposition, and reserves the right to modify Mr. Hanna's opinion once Mr. Jones has given his deposition.

Dated: June 3, 2013

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